

**WHAT YOU NEED TO KNOW TO MAKE
FREEDOM OF INFORMATION ACT (FOIA) REQUESTS**



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MANAGEMENT TEAM
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“A Democracy works best when the people have all the information that the security of the nation permits. No one should be able to pull the curtains of secrecy around decisions which can be revealed without injury to the public interest.”

JAMES MADISON

INTRODUCTION

This handbook is intended to assist you in making Freedom of Information Act (FOIA) requests for United States Transportation Command (USTRANSCOM) records. It will get you started and provide you with a brief description of your rights and the manner in which USTRANSCOM will respond to your requests. The information contained herein is not intended to be definitive or exhaustive.

REFERENCES

1. Title 5, United States Code (U.S.C.), Section 552, as Amended.
2. Department of Defense (DOD) Directive 5400.7, DOD Freedom of Information Act (FOIA) Program.
3. DOD Regulation 5400.7, DOD Freedom of Information Act Program.

HISTORY

The FOIA, Title 5, U.S.C., Section 552, as Amended, was signed into law on 4 July 1966 to provide the fullest possible disclosure of information to the public. Key concerns of the FOIA include:

1. All individuals have equal rights of access, while ensuring that information essential for adversaries to plan, prepare, or conduct terrorist or related hostile operations against the United States is denied.
2. The burden is on the Government to justify the withholding of a document, not on the person who requests it.
3. Individuals denied access to documents have a right to seek injunctive relief in the courts. The FOIA was amended in 1974 to encourage more disclosure than the original statute allowed, in 1986 to strengthen the language for investigations and establish various categories of requesters for the purpose of fee assessments, and in 1996 to align the original statute with the electronic age.

USTRANSCOM AND DOD POLICY

For FOIA purposes, USTRANSCOM is under responsibility of the DOD program, which is directed and administered by the Office of the Assistant Secretary of Defense for Public Affairs (reference DOD 5400.7-R). USTRANSCOM is a designated DOD component, operates a FOIA office, and responds directly to requests for USTRANSCOM records (reference USTRANSCOM Instruction 33-26). USTRANSCOM policy may be found on the World Wide Web (WWW) by entering <http://www.transcom.mil> and click on "Freedom of Information Act." At the DOD link, you may review the "DOD Freedom of Information Act Handbook," the "DOD Freedom of Information Act Regulation," DOD 5400.7-R, the "Annual Freedom of Information Act Reports to Congress," the DOD "Freedom of Information Act Briefing," and the "Office of the Secretary of Defense/Joint Staff Electronic Reading Room."

FOIA REQUESTS

Any "person" (a member of the public [U.S. or foreign citizen/entity]), an organization, or a business, but not including a Federal Agency or fugitive from the Law) can file a FOIA request. The FOIA's scope includes Federal Executive Branch departments, agencies, and offices; Federal regulatory agencies; and Federal corporations. Congress, the Federal Courts, and parts of the Executive Office of the President are not subject to the FOIA. State and local governments are likewise not subject to the Federal FOIA, but some states have their own equivalent access laws for state records. At the USTRANSCOM level, you may expect to find policy and planning information for the Defense Transportation System. FOIA requests for USTRANSCOM records should be addressed to:

USTRANSCOM/TCJ6-RII
ATTN: FOIA Office
508 Scott Drive
Scott AFB IL 62225-5357

Label your request "Freedom of Information Act Request," preferably within the request letter. State your willingness to pay applicable fees. If you request a fee waiver, provide justification for such a waiver. Describe the specific records you are requesting in enough detail so that they can be located with a reasonable amount of effort. Generally, a record is reasonably described when the description contains sufficient file-related information (type of document, title, subject area, date of creation, originator, etc.); or the request contains enough event-related information (date and circumstances surrounding the event the record covers) to permit an organized, non-random search. Electronic mail (e-mail) and facsimile (fax) requests are also acceptable.

NOTE: A sample request letter is attached.

RECORDS

A record is the product(s) of data compilation, such as all books, papers, maps, and photographs; machine readable materials, inclusive of those in electronic form or format; or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal Law in connection with the transaction of public business and in possession and control of the originating office at the time the FOIA request is made. The following are not included within the definition of the word "record:"

1. Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence.
2. Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.
3. Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

The FOIA does not require USTRANSCOM to answer questions, render opinions, or provide subjective evaluations. A FOIA request must ask for existing records, such as those mentioned above. For the purpose of the FOIA, the definition of an "Electronic Record" is: Records (including e-mail) that are created, stored, and retrieved by electronic means.

The FOIA requires that records created on or after 1 November 1996 be made available electronically, as well as in hard copy, in the FOIA reading room for inspection and copying, unless such records are published and copies are offered for sale. The USTRANSCOM Reading Room is located in Building 1961, Scott AFB, Illinois. Call 618-229-3828 for an appointment.

REASONS FOR NOT RELEASING A RECORD

1. *No Records.* A reasonable search of files failed to identify responsive records.
2. *Referrals.* The request is transferred to another DOD Component, or to another Federal Agency.
3. *Request Withdrawn.* The requester withdraws the request.
4. *Fee-Related Reason.* The requester is unwilling to pay fees associated with a request, the requester is past due in the payment of fees from a previous FOIA request, or the requester disagrees with the fee estimate.
5. *Records not Reasonably Described.* A record has not been described with sufficient specifics to enable the DOD Component to locate it by conducting a reasonable search.
6. *Not a Proper FOIA Request for Some Other Reason.* The requester has failed unreasonably to comply with procedural requirements, other than fee-related, imposed by agency policy.
7. *Not an Agency Record.* The information requested is not a record within the meaning of the FOIA and this handbook.
8. *Duplicate Request.* The request is a duplicate request (a requester asks for the same information more than once). This includes identical requests received via different means (e.g., e-mail, facsimile, mail, courier) at the same or different times.
9. *Other (Specify).* Any other reason a requester does not comply with published policy and procedures other than those outlined above.

EXEMPTIONS

Records (or portions of records) will be released unless that release harms an interest protected by an exemption cited in the Freedom of Information Act as 5 U.S.C. 552 (b) (1) through (b) (9).

1. *Exemption 1 (5 U.S.C. 552 (b) (1))*. Records properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under criteria established by Executive Order.

2. *Exemption 2 (5 U.S.C. 552 (b) (2))*. Low 2: Records related solely to the internal personnel rules and practices of the respective agency of a relatively trivial nature. High 2: Records containing or constituting statutes, rules, regulations, orders, manuals, directives, instructions, and security classification guides, the release of which would allow circumvention and substantially hinder the effective performance of a significant function of the respective agency.

3. *Exemption 3 (5 U.S.C. 552 (b) (3))*. Information in statutes specifically exempt from release by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld.

4. *Exemption 4 (5 U.S.C. 552 (b) (4))*. Records containing trade secrets or commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals set forth in or incorporated by reference in a contract entered into between the respective agency and the offeror that submitted the proposal, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future or impair some other legitimate Government interest.

5. *Exemption 5 (5 U.S.C. 552 (b) (5))*. Records containing information considered privileged in litigation, primarily under the deliberative process privilege. To qualify for this exemption, records must be both deliberative in nature, as well as part of a decision making process. Also potentially exempted are records pertaining to the attorney-client privilege and the attorney work product privilege.

6. *Exemption 6 (5 U.S.C. 552 (b) (6))*. Records containing information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to a requester, other than the person about whom the information is about, would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act system of records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties.

7. *Exemption 7 (5 U.S.C. 552 (b) (7))*. Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of Executive Orders or regulations issued pursuant to law: Information that, if released, could constitute an unwarranted invasion of personal privacy of a living person, including surviving family members and/or could reasonably be expected to endanger the life or physical safety of an individual.

8. *Exemption 8 (5 U.S.C. 552 (b) (8))*. Records containing information relating to the examination, operation, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions. Exemption 8 is not normally applicable to DOD.

9. *Exemption 9 (5 U.S.C. 552 (b) (9))*. Records containing geological and geophysical information and data (including maps) concerning wells. Exemption 9 is not normally applicable to DOD.

RELEASE AND PROCESSING PROCEDURES

Generally, USTRANSCOM shall endeavor to provide a final response determination within the statutory 20 working days (excluding weekends and Federal holidays). If a significant number of requests, or the complexity of the requests prevents a final response determination with the statutory time period, USTRANSCOM shall advise the requester of this fact in an interim response and explain how the request will be responded to within its multitrack processing system.

1. *Simple Requests.* USTRANSCOM has a processing queue for simple requests based on a first-in, first-out concept.
2. *Complex Requests.* USTRANSCOM has a processing queue for complex requests based on complexity (search time involved to locate responsive records, review of responsive records, referral of responsive records to other agencies for review, and/or designation of fee category).
3. *Expedited Requests.* USTRANSCOM has an expedited processing queue for requests indicated as such and demonstrating a compelling urgent need for the information. Expedited requests will be processed as soon as practicable.
 - *Compelling need* means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.
 - *Compelling need* also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.
 - *Urgently needed* means that the information has a particular value that will be lost if not disseminated quickly.
4. *Other Reasons.* Other reasons that merit expedited processing are an imminent loss of substantial due process rights and humanitarian needs/promote the welfare and interests of mankind.

APPEAL RIGHTS

The USTRANSCOM Commander in Chief has designated the Director, Command, Control, Communications and Computer Systems (TCJ6) to be the official authorized to deny initial FOIA requests for records. If your FOIA request is initially denied in whole or in part by USTRANSCOM under one or more of the nine exemptions or denied for some other reason, you will be advised of your appeal rights and the proper procedures for submitting the appeal within 60 days to the Director, Administration and Management and Washington headquarters Services, Directorate for Freedom of Information and Security Review, Room 2C757, 1155 Defense Pentagon, Washington, D.C. 20301-1155.

FEE CATEGORIES

The FOIA allows fees to be charged to certain types of requesters, but it also provides that waivers or reductions in fees be given if disclosing the information is in the public interest. Public interest is defined as "information, which significantly enhances the public's knowledge of the operations and activities of USTRANSCOM." The FOIA requires that requesters be placed into one of the below categories.

1. *Commercial*. The term "commercial use" request refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. Fees for commercial requesters are limited to reasonable standard charges for document search, review, and duplication. Requesters must reasonably describe the records sought.

2. *Educational or Non-Commercial Scientific Institution or News Media*. Requesters in this category should indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are requested.

- *Educational Institution*. The term "educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education which operates a program or programs of scholarly research.
- *Non-Commercial Scientific Institution*. The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

- *News Media.* The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals who make their product available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

3. *All Other Requesters.* Requesters who do not qualify in the categories above are considered "other" requesters and normally make requests for agency records for their personal use. "Other" requesters receive two hours search, all review costs, and duplication of the first 100 pages at no cost.

All requesters should submit a willingness to pay fees regardless of the fee category; however, this does not mean you will be charged fees. Except for commercial requesters whose fees total more than \$15, waivers are always considered. Fee waivers may be granted when disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government. The following factors are weighed in making a fee waiver determination:

1. Subject of the request.
2. Informative value of the information to be disclosed.
3. Contribution to an understanding of the subject by the general public likely to result from the disclosure.
4. Significance of the contribution to public understanding.
5. Disclosure of the information is not primarily in the commercial interest of the requester.
6. Ability of the requester to disseminate the information.

GILBERT R. HAWK, Brigadier General, USAF
Director, Command, Control, Communications
and Computer Systems

Attachment:
Sample FOIA Request Letter

SAMPLE

FREEDOM OF INFORMATION ACT REQUEST LETTER

USTRANSCOM/TCJ6-RII
ATTN: FOIA Office
508 Scott Drive
Scott AFB, Illinois 62225-5357

Dear Mrs. Holt:

This is a request under the Freedom of Information Act (5 U.S.C. 552, as Amended).

I request that a copy of the following document(s) be provided to me: *[Identify the documents as specifically as possible.]*

In order to help you determine my status for the purpose of assessing fees, you should know that I am *[insert one of the descriptions below]*.

a representative of the news media affiliated with the _____ newspaper (magazine, television stations, etc.), and this request is made as part of news gathering and not for a commercial use.

affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly or scientific purpose and not for a commercial use.

affiliated with a private business and am seeking information for use in the company's business.

an individual seeking information for personal use and not for commercial use.

I am willing to pay fees for this request up to a maximum of \$_____. If you estimate the fees will exceed this limit, please inform me first.

[Optional] I request a waiver of fees for this request because disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the United States Transportation Command and is not primarily in my commercial interest. *[Include details about how the requested information will be disseminated by you to the general public.]*

[Optional] I also include a telephone number at which I can be contacted if necessary to discuss any aspect of my request.

Sincerely,

Name

Address

City, State, Zip Code

Telephone Number *[Optional]*